

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

RONALD A. SCHENA and
RACHAEL SCHENA,

Debtors.

Case No. 09-13165-s11

**HIGH DESERT STATE BANK'S OBJECTION TO DEBTORS'
MOTION TO CLARIFY DEADLINES IN WHICH TO FILE PLAN
AND DISCLOSURE STATEMENT PURSUANT TO 11 U.S.C. § 1121(e)**

COMES NOW High Desert State Bank, Creditor, by and through its attorneys, the Law Office of George "Dave" Giddens, P.C., and for its objection to Debtors' Motion to Clarify Deadlines in Which to File Plan and Disclosure Statement Pursuant to 11 U.S.C. § 1121(e) (the "Motion"), filed on November 17, 2009 (Document No. 63), states:

1. Debtors' Motion claims that Debtors should be entitled to the deadlines accorded to a small business in a Chapter 11 case.

2. Under § 101(51D) of the Bankruptcy Code, a "small business debtor" is one which:

a. Is engaged in commercial or business activities with aggregate noncontingent liquidated debts of \$2,190,000 or less as of the date of the petition; AND

b. Does not include any member of a group of affiliated debtors with aggregate noncontingent liquidated debts in an amount greater than \$2,190,000.

3. Although Debtors may meet the debt limits, Debtors are not engaged in commercial or business activities, and thus do not fit within the intended definition of a "small business debtor."

4. Further, on Debtors' voluntary petition, filed on July 21, 2009 (Document No. 1), Debtors checked the box under Chapter 11 Debtors which states that "Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D)." As such, § 1121(e) is not applicable.

5. Instead, Debtors exclusivity period and deadline to file a plan are governed by §§ 1121(b) and 1121(c)(2), which provide a deadline of 120 days after the date of the order for relief.

6. Similarly, Debtors pray for an extension of up to 300 days to file a plan pursuant to § 1121(e). As Debtors are not a small business, they may not receive this extension.

7. Under § 1121(d)(2)(A), the section applicable to these Debtors, the 120 day period specified above may not be extended beyond a date that is 18 months after the date of the order for relief.

8. Regardless, Creditor objects to any extension of this deadline past December 18, 2009, the 120-day mark.

a. Upon information and belief, Debtors will be unable to confirm a Chapter 11 Plan if and when they do file one.

b. As such, any extension of time only delays the inevitable conversion or dismissal of Debtors' Chapter 11 case to the detriment of their creditors.

c. Additionally, as counsel for the Debtors is an experienced and skilled attorney, Debtors should be able to draft and file a plan that is written in such a manner as to plan for alternative contingencies. Thus, an extension of the deadline to file a plan until after the litigation pending in arbitration has been resolved is unnecessary.

WHEREFORE, Creditor High Desert State Bank respectfully requests the Court to enter its Order:

1. That Debtors' deadline to file a plan is December 18, 2009, 120 days after the date of the order for relief.
2. That Debtors are denied any extension of the deadline to file a Chapter 11 plan beyond the 120 day limit.
3. For such other and further relief as the Court deems just and proper.

Respectfully submitted:

Law Office of George "Dave" Giddens, P.C.

/s/Christopher M. Gatton

Submitted electronically 11.20.09

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Attorneys for High Desert State Bank

CERTIFICATE OF SERVICE

I hereby certify that on the **20th day of November, 2009**, I filed the foregoing pleading electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

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Notice was mailed by first class, postage prepaid, mail on **November 20, 2009**, to:

Ronald and Rachael Schena
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/s/Christopher M. Gatton
Submitted electronically 11.20.09